

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1432 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UCO BANK EMPLOYEES ASSOCIATION

Versus

UCO BANK

Appearance:

MR HJ NANAVATI for Petitioners
MR KG VAKHARIA for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/10/2000

ORAL JUDGEMENT

The petitioners, above named, have preferred this petition under Article 226, 14 and 16 of the Constitution of India for appropriate writ, order or direction declaring that the action of the respondent UCO Bank (for

short, 'the bank') in withholding the increment due to petitioner no.2 on 1.1.1986 during the period of suspension is illegal, arbitrary and unconstitutional and without authority of law. The petitioners have further prayed for declaration that under settlement governing the service conditions of the workmen of Nationalised Banks, the bank has no authority to withhold the increment during the period of suspension of the concerned workman in absence of any provisions in the settlement arrived at between the parties from time to time. The petitioners have further prayed to direct the respondent bank to release increment of petitioner No.2 due to him in the year 1986 and to pay arrears and other attendant benefits to which he is entitled.

2. The short question involved in this petition is that the first petitioner is a Union which is duly registered and incorporated under the Trade Union Act, 1921. (for short, 'the Union') That it is affiliated with the All India Bank Employees Association. That petitioner No.2 is a workman who is an employee of the UCO Bank at present working as a Clerk in Rakhial branch of the respondent Bank at Ahmedabad. It is the contention of the petitioners that in the year 1966, a settlement of Industrial Dispute between the management of the Bank and their workmen was arrived at. The said settlement was arrived at under section 2(p) of the Industrial Dispute Act which is known as First Bipartite Settlement. That thereafter, on 12.10.1970, second settlement was arrived at between the same parties in respect of wage structure of the Bank employees. That thereafter, on 1.8.1979, another memorandum of settlement was signed by the Management of 49 'A' Class Banks and the workmen under section 2(p), read with section 18(1) of the Industrial Disputes Act, read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. That even that settlement was also arrived at on 17.9.1984 between the said parties. Therefore, the service conditions of the employees of the Bank employees are governed by the terms of the aforesaid settlements arrived at between the parties.

3. The petitioners state that petitioner no.2 was appointed as clerk in the respondent Bank on 24.1.1972. That a charge-sheet was served upon the second respondent on 20.8.1985 which was replied by him on 4.10.1985. That the respondent had ultimately suspended the petitioner by order dated 3.10.1985 which is at Annexure 'A' to the petition. That as per the said order, the second petitioner would be entitled to subsistence allowance at the rate 1/3 of the pay and allowance for the first three

months on his suspension and after three months, he would be entitled for 1/2 of the pay and allowance till the final decision. It appears that some of the charges were held to be proved against the second petitioner and, therefore, the disciplinary authority issued show cause notice to the second petitioner on 3.2.1987. The show cause notice shows that there was a tentative decision of the respondent to stop three annual increments of the second petitioner for the years 1987, 1988 and 1989. That after hearing the second petitioner, the disciplinary authority by order dated 11.3.1987 reduced the punishment to that of stoppage of two increments for the years 1987 and 1988. It was further directed that all the increments so withheld are to be released from 1989. A copy of the order dated 2.3.1987 has been placed at annexure 'B' to the petition. Thereafter, it appears that the second petitioner demanded increment for the year 1986. The respondents denied the said increment, and therefore, the petition has been filed by the petitioner stating that in view of the settlement, the second petitioner was entitled to increment of 1986 during the period of suspension and, therefore, the said action of the respondent withholding the increment is illegal and, therefore, the aforesaid plea has been raised in this petition.

4. On receiving the petition, rule was issued and Mr K G Vakharia, learned Advocate appeared on behalf of the respondent to contest the petition. Affidavit has not been filed on behalf of the contesting respondent in the matter. During the course of the hearing learned Advocate for the petitioner has argued that the second petitioner was entitled to pay and allowances during the period of suspension as per the settlement. That therefore, the second petitioner was entitled to pay and allowances which would include periodical increments which might fall on a particular day. It is his case that the increment of 1986 fell due on 1.1.1986 and the second petitioner was entitled to the said increment w.e.f. 1.1.1986. Argument was also advanced that the said increment was not paid, then it would amount to punishment of stoppage of three increment for the year 1986, 1987 and 1988. That there is no order to withhold these three increments but the order is restricted to withholding of two increments only. That therefore, there cannot be extra punishment and more punishment other than what has been ordered by the disciplinary authority.

5. It would be relevant to consider Annexure 'D' which is an order dated 6.4.1988 recorded by the

Divisional Manager. There it has been positively stated that the second petitioner was not entitled for increment for the year 1986. It has been mentioned in the order that the petitioner was under suspension during the year 1986. That he could not get increments while under suspension.

6. The increment for the year 1986 has now been released on the ground that at the relevant point of time, the second petitioner was under suspension and, therefore, he was not entitled for increment of 1986. There is no dispute about the fact that the increment fell due on 1.1.1986. It is also not in dispute that on that date the second petitioner was under suspension. The question therefore, would be as to whether the petitioner no 2 would be entitled to periodical increment which fell due on 1.1.1986, despite the fact that on that day he was under suspension. On this point the petitioner has relied upon a decision of the M.P. High Court in the case of Madhav Anant Rao Gore v State Bank of India, Bhopal & Ors. reported in 11 LLJ, 1986 M.P. 394. Learned Advocate for the petitioner has argued that the said decision is also based on an award and the present petitioners are also governed by the said award. It would be relevant to refer to the following observations made in the said judgment:

"The word "suspension pending enquiry" found in cl.(10-B) are of wider amplitude and it means that the bank employee could be suspended pending enquiry once the bank comes to the conclusion that there is prima facie case for proceeding against employee for major misconduct and he can be put under suspension and the suspension will continue till the enquiry is over. The abovesaid orders cannot be restricted by saying that suspension order can only be passed after the employee is charge-sheeted. Sub-cl.(a) of Clause (I) provides for giving a charge-sheet and sub-cl.(b) talks of suspension pending an enquiry. Pending an enquiry need not mean that it is to be after issuing of the charge-sheet. Enquiry starts as soon as the Management comes to the conclusion that there is a prima facie case for proceeding against an employee for major misconduct.

Under Cl.17 of the Desai Award Full pay and allowance has to be paid after one year provided the enquiry is not delayed for reasons attributable to the concerned workman or his

representative. This clause speaks full pay and allowances which means the employee under suspension is entitled to pay and allowances which he would have got but for the suspension. Hence an employee under suspension after one year is entitled to all the increments and quarterly allowances which he would have been entitled to if he was not under suspension."

The aforesaid decision makes it clear that as per the award, full pay and allowance are required to be paid after one year provided the enquiry is delayed for the reasons not attributable to the concerned workmen. In the present case, it is not the case of the respondent that the enquiry was delayed on account of some action or inaction on the part of the second petitioner. Therefore, the delay cannot be attributed to the second petitioner. In that view of the matter, the second petitioner was entitled to full pay and allowances. The interpretation is that this would include periodical increment which might fall during suspension also. When the second petitioner was entitled to full pay and allowances, it would mean that he was entitled to the salary including increment which might fall due on a particular date. In the present case, the second petitioner was entitled to increment on 1.1.1986 and, therefore, his pay was required to be fixed considering his increment falling due on 1.1.1986. After adding the said amount of increment, appropriate subsistence allowance was required to be paid to the second petitioner. This has not been done by the respondent. As said above, the respondent has not explained the position by filing affidavit. It is therefore, clear that the aforesaid action of the respondent in withholding the increment of 1986 is found to be illegal and against the provisions of settlement between the parties. In that view of the matter, the aforesaid decision will clearly apply to the facts of the case before us. Therefore, I am of the view that the second petitioner is entitled to periodical increment for the year 1986. Under the circumstance the present petition is required to be allowed and the respondent is required to be directed to release the aforesaid increment for the year 1986.

7. In the result, the present petition is allowed. The action of the respondent Bank in withholding the increment of the petitioner falling due on 1.1.1986 during the period of suspension is held to be illegal. The respondent bank is directed to release increment of

the second petitioner due to him in the year 1986. The respondent is further directed to calculate the arrears and other consequential benefits to which the second petitioner is entitled, and pay the same to the second petitioner. Rule is made absolute accordingly. No order as to costs.

13.10.2000 [D P Buch, J.]

msp.